

REMARKS/ARGUMENTS

The November 13, 2009, final Office Action: (a) rejected claims 1-15 and 17 under 35 U.S.C. § 112, second paragraph; (b) rejected claims 1-4 and 17 under 35 U.S.C. § 102(b) as being anticipated by Carl et al. (U.S. Pat. No. 6,047,216); (c) rejected claims 6, 7-13, 14 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Carl et al ('216 patent) alone or in combination with one or more of Turovski et al. (U.S. Pat. No. 7,311,703, Prakash et al. (U.S. Pub. No. 2003//0088242) and Ni et al. (U.S. Pat. No. 6,514,251); and, (d) provisionally rejected claims 1-15 and 17 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 7-10 and 12-14 of copending Application No. 11/646141 and/or copending Application No. 12/158831.

Applicant appreciates the Office's acceptance of the drawings filed on July 8, 2009.

By the present Amendment, applicants have amended independent claims 1 and 17 and dependent claims 5 and 15 to further clarify the claim language and further distinguish the present invention from the cited art.

More particularly, independent claims 1 and 17 have been amended to clarify that the dielectric tip member has a "proximal end portion." Applicant respectfully submits this amendment overcomes to the Office's perceived confusion concerning the earlier "proximal end" language.

Applicants note the Office's comment that earlier presented independent claims 1 and 17 failed to set forth that the applicator is functioning as a dipole radiator, which function was set forth in dependent claim 5. *See* November 13, 2009 Office Action, page 11, no. 17. Applicants

further note the Office's acknowledgement that claim 5 has been rejected only for nonstatutory provisional double patenting. *Id.*

Accordingly, Applicants have also amended independent claims 1 and 17 to recite that the applicator is functioning as a dipole radiator (as was earlier set forth in dependent claim 5).

In view of these amendments, applicants respectfully submit that the amended claims are patentably distinct over Carl and Carl in combination with the other cited references.


Applicants acknowledge the Office's provisional obviousness-type double patenting rejection based on copending Application No. 11/646141 and No. 12/158831. Applicants are prepared to file a terminal disclaimer to obviate the provisional rejection should one be required. *See* MPEP 804 (I)(B)(1).

Applicant respectfully requests a timely Notice of Allowance be issued in this case.

Respectfully submitted,

EUGENE M. CUMMINGS, P.C.

By:



David Lesht, Reg. No. 30,472
One North Wacker Drive
Suite 4130
Chicago, Illinois 60606
Telephone: (312) 984-0144
Facsimile: (312) 984-0146